

Kaiser closes Geisinger Health acquisition, forming Risant Health

Big systems get bigger: 5 large hospital deals to know

Ross v. University of Pittsburgh Medical Center

On January 18, 2024, Victoria Ross, a former University of Pittsburgh Medical Center (UPMC) nurse, filed an antitrust class action suit in the US District Court for the Western District of Pennsylvania against UPMC. The suit claims UPMC used its “monopsony power to prevent workers from exiting or improving their working conditions, to suppress workers’ wages and benefits, and to drastically increase their workloads, through a draconian system of mobility restrictions and widespread labor law violations that lock employees into sub-competitive pay and working conditions.”

HB 1633

An Act prohibiting the enforcement of certain noncompete covenants entered into by health care practitioners and employers.

HB 2012

An Act providing for cause of action for antitrust conduct, for indirect purchaser recovery under State antitrust laws and for premerger notice of health care mergers and transactions; and imposing penalties.

Class Action Antitrust Suit Claims University of Pittsburgh Medical Center Used Monopsony Market Power to Suppress Healthcare Workforce Conditions

On January 18, 2024, Victoria Ross, a former University of Pittsburgh Medical Center (UPMC) nurse, [filed an antitrust class action suit](#) in the US District Court for the Western District of Pennsylvania against UPMC. The suit claims UPMC

used its “monopsony power to prevent workers from exiting or improving their working conditions, to suppress workers’ wages and benefits, and to drastically increase their workloads, through a draconian system of mobility restrictions and widespread labor law violations that lock employees into sub-competitive pay and working conditions.”

Parties to the Suit

According to the suit, the UPMC system includes over 40 hospitals (making it the 18th largest hospital chain in the nation), and employs over 95,000 workers, making it the largest private sector employer in Pennsylvania. The plaintiff class includes licensed practical nurses, nurses, medical assistants, registered nurses, nurse assistants and orderlies currently or formerly employed at UPMC facilities providing in-patient care.

Details of the Claim

The plaintiffs claim that UPMC used noncompete clauses and do-not-rehire blacklists, and suppressed labor law rights to prevent unionization. The plaintiffs allege that these practices are a violation of Section 2 of the Sherman Act that prohibits monopolization and attempted monopolization. An economist cited in the suit claims that UPMC workers’ wages fell at a rate of 30 to 57 cents per hour for every 10% increase in UPMC’s market share, relative to comparable hospital workers. Plaintiffs allege that the staffing ratios at UPMC have been decreasing, even as staffing ratios have been increasing at other Pennsylvania hospitals. The suit claims that if UPMC had been subject to competitive market forces, it would have had to pay more to attract workers and raise staffing levels to avoid degrading the care it provides to patients. The suit also claims UPMC acquired its market power through anticompetitive acquisitions of competitors, facility shutdowns, and by preventing expansion of rivals. The complaint claims that these business practices allowed

UPMC to gain monopsony power in the related labor market that it used to suppress wages and benefits, increase workloads, degrade workplace conditions, and prevent workers from seeking other employment.

Plaintiffs will have to show that UPMC used its monopsony power to limit worker mobility, and used anticompetitive employment practices to suppress workers' wages, degrade work conditions, and prevent unionization. The complaint follows a similar [complaint filed by two unions](#) in May 2023 to the Justice Department asking for an investigation of potential antitrust violations by UPMC.

Effects of Healthcare Marketplace Power on Healthcare Workers

While much attention has been paid to the [harms caused to patients and employers](#) by extreme market power of health systems (including higher costs and lower quality of care), this case highlights the potential harm that can befall healthcare workers in markets without meaningful competition. For example, a recent [study](#) by Prager and Schmitt found that where mergers significantly increase hospital concentration, four years after the merger “nominal wages were 6.8% lower for nurses” than they would have been without the merger. That study concluded that there is “evidence of reduced wage growth in cases where both (i) the increase in concentration induced by the merger is large and (ii) workers' skills are industry-specific.”

Increased Enforcement Attention on Monopsony Power and Harms to Workforce

This case follows revisions to the [Merger Guidelines](#) that were made by the Federal Trade Commission (FTC) and Department of Justice in December 2023. Specifically, Guideline 10 states that when a merger involves competing buyers, including employers as buyers of labor, the FTC and DOJ can assess the impact of this merger with the aim of protecting competition

in all forms. In the discussion of guideline 10, the Agencies state that “where a merger between employers may substantially lessen competition for workers, that reduction in labor market competition may lower wages or slow wage growth, worsen benefits or working conditions, or result in other degradations of workplace quality.” While the merger guidelines are specific to how the FTC and DOJ review proposed transactions, the recognition of the potential harms of monopsony power on workers align with the claims made in this case.

Monopsony [antitrust litigation against employers claiming wage suppression is rare](#), but not unheard of. For example, in 2006, Pat Cason-Merenda, RN [filed suit](#) against the Detroit Medical Center claiming that they colluded with seven other hospitals to suppress the wages of more than 20,000 nurses, which was [ultimately settled](#) when the hospitals agreed to pay \$90 million dollars. However, the UPMC cases seem to take a unique approach by adding a claim that, in addition to holding down wages, UPMC used its monopsony power to restrict job mobility (via noncompete agreements and “do not hire” blacklists) and to prevent unionization.

The Source will monitor the case for relevant developments.

Pennsylvania physician sues former employer over noncompete clause

UPMC faces antitrust lawsuit

‘Shell game’: When private equity comes to town, hospitals can see cutbacks, closures

Jefferson, Lehigh Valley Health to merge in 2024